

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 217

June 27, 1958

REFUNDS: DUPLICATE MONEY ORDER PAYMENTS

Syllabus:

Postmaster is entitled to recover duplicate money order payments from the Franchise Tax Board.

Taxpayers filed the original and a copy of their 1955 return with this office. The original return was paid by a post office money order. Both returns were assessed and since no payment accompanied the copy, payment was demanded. Believing that the money order had been lost in the mails, taxpayer contacted the Post Office Department and requested that a duplicate be issued.

On January 25, 1957, we learned of the duplicate returns and payment and made a refund to the taxpayer. The Postmaster has now demanded refund to him of the duplicate payment on the money order regardless of the fact that refund has already been made to the taxpayer. Advice is requested as to whether the Postmaster is entitled to recover the duplicate money order payment from the Franchise Tax Board.

The Franchise Tax Board is obligated to refund the duplicate money order payment to the Post Office Department. Section 789 of Title 39 of the United States Code Annotated provides that where post office funds are paid out by the mistake of any officer or employee of the Postal service, the Postmaster General shall cause suit to be brought to recover such wrongful payments.

Under the facts of this case it is clear that an overpayment of post office funds was made to this office. A post office money order is an order for payment of money to the payee named therein drawn by one post office upon another. The original and the duplicate money orders were made out to the Board as payee and were cashed by us. Accordingly we received the overpayment which the post office mistakenly authorized. The fact that the Board refunded the duplicate payment to the taxpayer would have no effect on our primary obligation to the post office. We are in the position of having merely made an erroneous refund and we assume the risk of obtaining reimbursement.

In this type of case, however, it is recommended that we first notify the taxpayer to refund the amount in question to the post office department. If taxpayer refuses, we should make the refund to the post office and proceed against the taxpayer under our regular collection provisions.